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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Good Health Natural Foods, Inc.

Serial No. 76145027

Eric D. Paulsrud of Leonard, Street and Deinard for Good Health Natural Foods, Inc.

Georgia Ann Carty, Trademark Examining Attorney, Law Office 111 (Craig Taylor, Managing Attorney).

Before Bucher, Holtzman and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On October 12, 2000, Good Health Natural Foods, Inc. (applicant) applied to register the mark VEGGIE CRISPS (in typed form) on the Principal Register for goods identified as "potato chips, and snack foods made primarily from potato flour with other vegetable ingredients" in International Class 29. The application (Serial No.

76145027) is based on applicant's allegation of a bona fide intention to use the mark in commerce.

The examining attorney refused to register the mark on the ground that the mark, when applied to the goods, is merely descriptive. 15 U.S.C. § 1052(e)(1). After the examining attorney made the refusal final, this appeal followed.¹

The examining attorney's position is that "it is evidently clear that the applicant's goods feature goods that may be defined as CRISPS that have vegetables as part of their ingredients." Office Action dated March 14, 2002 at 2. In response, applicant argues that its mark is suggestive inasmuch as "'CRISPS' is a suggestive term when used in connection with Applicant's goods because it suggests a multitude of different meanings" and "VEGGIE is suggestive in conveying to the consumer that the product is something more than a simple potato chip or cracker." Applicant's Brief at 4.

We affirm.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics

¹ On July 16, 2003, the board granted applicant's request to strike the examining attorney's brief. Therefore, when we refer to the positions of the examining attorney, we will be referring to preceding papers.

of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). See also In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); In re MBNA America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003) (A "mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service").

To be merely descriptive, a term need only describe a single significant quality or property of the goods. In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); Meehanite Metal Corp. v. International Nickel Co., 262 F.2d 806, 120 USPQ 293, 294 (CCPA 1959). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is descriptive. Abcor, 200 USPQ at 218.

We begin by analyzing the individual terms "veggie" and "crisps." The examining attorney has introduced a dictionary definition of "veggie" as meaning "a vegetable (informal)." *The American Heritage Dictionary of the English Language* (3rd ed.). Clearly, the term "veggie" is merely descriptive for a snack food containing "other

vegetable ingredients" as applicant's products are identified.

Next, we look at the term "crisps." The examining attorney has submitted a *Consumer Reports* (May 2001) article on potato chips. In that article, the author explains that "[f]abricated varieties such as Pringles are uniform chips made from a dough of dehydrated potato flakes - which means they can't be called potato 'chips,' but must be labeled 'crisps' or 'snacks.'" Other excerpts show similar uses of the term "crisps."

Technology to produce reduced fat potato chips (crisps) was developed, and in 1983, Nalley's low fat, low salt Golden Light potato chips were launched.

Food Engineering & Ingredients, May 1, 2001

Klatte highlighted a few key salted snack trends affecting the potato chip and potato crisps categories.

Snack Food & Wholesale Bakery, April 2000.

The chip has become the garnish of the moment ... Potato chips and crisps are just one option.
Nations Restaurant News, November 5, 2001.

PepsiCo innovations which have been appearing on the market over the past year, include Lay's Deli-Style Chips which are harder texture, gourmet potato chips (crisps).

Food Engineering International, September 1, 2001.

In addition, the examining attorney included two registrations for snack foods in which the registrant disclaimed the term "crisps." See Registration Nos.

1,912,686 (PRINGLES RIGHT CRISPS, "crisps" disclaimed) and No. 2,119,198 (JALSBERG CHEESE CRISPS, "cheese crisps" disclaimed). Other registrations disclaim the term "crisps" in association with crackers. See Registration Nos. 2,374,285 and 2,228,609. Third-party registrations can be used as a form of dictionary to illustrate how the term is perceived in the trade or industry. In re J.M. Originals Inc., 6 USPQ2d 1393, 1394 (TTAB 1987) ("[T]hird party registrations are of use only if they tend to demonstrate that a mark or a portion thereof is suggestive or descriptive of certain goods and hence is entitled to a narrow scope of protection. Used in this proper, limited manner, third party registrations are similar to dictionaries showing how language is generally used") (internal quotation marks deleted).

One other point that provides some support for the examining attorney's position is that the term "crisps" is defined as "Chiefly British. A potato chip." *The American Heritage Dictionary of the English Language* (3rd ed.). Several articles appearing in United States publications use the term "crisps" in this manner.

But once in their street clothes, the fashion is much the same on both sides of the Atlantic: Down jackets and pedal pushers. As for lunch, Oak usually eats a sandwich, crisps (potato chips) and biscuits (cookies).

Central Maine Morning Sentinel, April 25, 2001.

The food is not memorable, but pubs do provide potato chips - call them "crisps," please -- in some truly exotic flavors.

Washington Post, March 11, 2001.

The British seem to be voracious consumers of potato chips - or "crisps" as they are sometimes called.

Boston Globe, October 13, 2000.

While the fact that a word has a descriptive meaning in a foreign country does not mean that the term would have the same in the United States, in this case, we have at least some evidence that Americans would be exposed to that meaning through its use in publications that originate in the United States.

Next, we must consider whether the mark as a whole is merely descriptive because the fact that the individual components of the mark are descriptive does not dictate that the combined term is likewise merely descriptive. Here, when the terms "veggie" and "crisps" are combined and considered in their entirety, we conclude that the mark that applicant seeks to register is merely descriptive. When prospective purchasers would encounter the mark VEGGIE CRISPS on snack foods made primarily from potato flour with other vegetable ingredients, the mark simply informs prospective purchasers that its chip-like snacks are made

from potatoes and other vegetable ingredients. There is nothing unique or incongruous about the combined term.

Applicant argues that "veggie" is merely suggestive because "it does not identify any of a broad group of vegetable ingredients that could be contained in the goods." However, the designation "vegetable" is not so broad as to be meaningless and applicant's identification of goods suggests that it intends to use "other vegetable ingredients" in its snack food. The term "veggie" would exactly describe the fact that applicant's snack food could contain other vegetable ingredients in addition to potatoes.

Applicant also points out that the term "crisps" has many different meanings. While the evidence does show that "crisp" is a term applied to many different food products, it is used descriptively with these products. The evidence indicates that "crisps" is used to describe potato chips, potato chip-like products, crackers, and other snack foods. Applicant's use of the term conforms to these common uses.

Based on this record, we conclude that applicant's mark is merely descriptive when used with applicant's goods inasmuch as applicant's mark identifies a feature or characteristic of applicant's goods, i.e., they are crisps made, inter alia, with vegetable ingredients.

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Decision: The examining attorney's refusal to register the term VEGGIE CRISPS on the ground that the mark is merely descriptive of the involved goods is affirmed.